

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:16-cv-00277-FDW

LISA HARKEY, )  
                        )  
Plaintiff,         )  
                        )  
vs.                      )  
                        )  
CAROLYN W. COLVIN, Acting )  
Commissioner of Social Security, )  
                        )  
Defendant.              )  
                        )

THIS MATTER is before the Court *sua sponte* concerning the status of this case. Plaintiff, through counsel, filed this case on June 1, 2016. On June 8, 2016, this Court granted Plaintiff's Motion to Proceed *In Forma Pauperis* (Doc. No. 4), which permitted service to be made by the United States Marshal. Plaintiff, however, never submitted a prepared summons to the Clerk's office nor has Plaintiff requested an extension of time for doing so.

Rule 4(m) of the Federal Rules of Civil Procedure provides, “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own motion after notice to the plaintiff—must dismiss the action without prejudice . . . .” In this case, the deadline for service expired over a month ago on August 30, 2016.

Rule 41(b) of the Federal Rules of Civil Procedure provides, “If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action . . . .” Since no defendant has been served, no defendant is available to make such a motion. Moreover, “a district court possesses the ‘inherent power’ to dismiss a case *sua sponte* for failure to prosecute. . . . [S]uch authority derives from ‘the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.’” Eriline Co.,

S.A. v. Johnson, 440 F.3d 648, 654 (4th Cir. 2006) (quoting Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962)). “[A]side from the interests of the individual parties in a lawsuit, a district court has an important interest in keeping its docket from becoming clogged with dormant cases . . . .” Erline Co., 440 F.3d at 654.

For these reasons, the Complaint is DISMISSED for failure to comply with Federal Rules of Civil Procedure 4(m) and failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Plaintiff’s case is DISMISSED *without prejudice* for the reasons stated herein. The Clerk is respectfully DIRECTED to CLOSE THE CASE.

Signed: October 6, 2016



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Frank D. Whitney  
Chief United States District Judge

